

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-08
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SUBJ: ILLEGAL EMPLOYMENT OF FOREIGN WORKERS: PROPOSED
DIRECTIVE REVISED

REF: ECA-185, MAY 3, 1977

1. SUMMARY: AT THE STRONG URGING OF THE EUROPEAN
PARLIAMENT AND THE COMMUNITY'S ECONOMIC AND SOCIAL
COMMITTEE, THE EC COMMISSION HAS REDRAFTED A PROPOSED
DIRECTIVE ON ILLEGAL MIGRATION AND EMPLOYMENT TO GIVE MORE
EMPHASIS TO PROTECTING THE RIGHTS OF ILLEGAL WORKERS,
PARTLY IN THE HOPE THAT THIS WILL LESSEN THE INCENTIVE
TO RECRUIT THEM. END SUMMARY.

2. THE COMMISSION OF THE EUROPEAN COMMUNITIES APRIL 3
PUBLISHED AND SENT TO THE COUNCIL OF MINISTERS A REVISED
PROPOSAL FOR A DIRECTIVE DESIGNED (AS ITS TITLE SAYS) "TO
COMBAT ILLEGAL MIGRATION AND ILLEGAL EMPLOYMENT." THE
DOCUMENT CONTAINS SUBSTANTIAL MODIFICATIONS OF A DRAFT
THE COMMISSION SUBMITTED TO THE COUNCIL IN NOVEMBER 1976
(REFAIR).

3. THE MOST IMPORTANT CHANGE IS THE ADDITION OF PROVISIONS
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TO PROTECT THE RIGHTS OF MIGRANT WORKERS. THE NEW DRAFT
KEEPS AN ARTICLE THAT GUARANTEES A FOREIGN WORKER INVOLVED
IN ILLEGAL EMPLOYMENT THE RIGHT TO APPEAL A PENALTY AND TO
OBTAIN A STAY IN DEPORTATION TO ALLOW JUDICIAL REVIEW OF
HIS CASE. THE NEW PROVISIONS ON MIGRANT RIGHTS WOULD
ALSO REQUIRE MEMBER STATES TO ENSURE THAT:
--EMPLOYERS OF ILLEGAL MIGRANTS PAY SUCH WORKERS THE

SAME WAGES AND GRANT THE SAME BENEFITS AS WOULD BE THE CASE FOR LEGAL EMPLOYMENT, INCLUDING SEVERANCE PAY AND SOCIAL SECURITY CONTRIBUTIONS.

--MIGRANTS CAN MAKE CLAIMS FOR SHORT-CHANGING IN PAY AND BENEFITS EVEN IN PAST EMPLOYMENT.

--EMPLOYERS OR RECRUITMENT AGENCIES WOULD HAVE TO PAY REPATRIATION COSTS WHEN ILLEGAL MIGRANTS ARE DEPORTED.

4. THE EMPHASIS ON PROTECTION OF MIGRANT RIGHTS COMES AS A RESULT OF THE STRONG RECOMMENDATIONS OF THE EUROPEAN PARLIAMENT AND OF THE EC ECONOMIC AND SOCIAL COMMITTEE (ESC). THE ESC IN FEBRUARY 1977 ARGUED THAT MEASURES TO COMBAT ILLEGAL MIGRATION MUST START WITH RECOGNIZING "THE FACT THAT IT IS THE ILLEGAL MIGRANT HIMSELF WHO IS GENERALLY THE VICTIM." MAKING A SIMILAR POINT, THE EUROPEAN PARLIAMENT IN NOVEMBER 1977 STATED:

"GRANTING TO ILLEGAL MIGRANTS OF RIGHTS DERIVING FROM THE WORK THEY PERFORM, AND HENCE THE FULFILLMENT OF THE CORRESPONDING OBLIGATIONS BY THE EMPLOYERS, IS ESSENTIAL NOT ONLY FOR HUMANITARIAN AND SOCIAL REASONS BUT ALSO IN TERMS OF UTILITARIAN SELF-INTEREST...CONTROLS AND REPRESSIVE MEASURES IN THEMSELVES WILL NOT SUFFICE: THE ECONOMIC ADVANTAGES

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OFFERED BY ILLEGAL LABOR TO THOSE PREPARED TO USE AND EXPLOIT IT MUST BE ELIMINATED."

THE PARLIAMENT THEREFORE "INSISTINGLY" URGED THE COMMISSION TO SUBMIT FURTHER PROPOSALS "TO FILL IN THE GAPS...CONCERNING THE SOCIAL ASPECTS."

5. THE COMMISSION DID NOT GO AS FAR AS THE COMMITTEE AND THE PARLIAMENT SUGGESTED. IN PARTICULAR THE NEW DRAFT DID NOT INCORPORATE THEIR PROPOSALS TO PERMIT ILLEGAL MIGRANT WORKERS--AT LEAST THOSE LIVING IN THE EC WHEN THE NEW DIRECTIVE GOES INTO EFFECT--"TO REGULARIZE THEIR SITUATION." (THE COMMISSION ESTIMATES THAT THERE ARE AT LEAST 600,000 "CLANDESTINE" FOREIGN WORKERS ILLEGALLY EMPLOYED IN THE NINE EC COUNTRIES.)

6. THE COMMISSION DID FOLLOW THE ADVICE OF BOTH THE ESC AND THE PARLIAMENT TO PUT MORE STRESS ON "PREVENTION" BY PROVIDING INFORMATION IN ADVANCE TO POTENTIAL MIGRANTS. THE NEW DRAFT SAYS, FOR EXAMPLE, THAT EC GOVERNMENTS SHOULD TRY TO GET STATES EXPORTING LABOR TO CIRCULATE "INFORMATION LIKELY TO BE OF HELP IN PREVENTING ILLEGAL MIGRATION AND ILLEGAL EMPLOYMENT"

(THIS PROBABLY IS INTENDED TO INCLUDE ACCURATE
INFORMATION ON PROSPECTS OF FINDING A JOB.)

7. UPON THE SPECIFIC ADVICE OF PARLIAMENT, TOO, THE
COMMISSION DROPPED A PROVISION CONTAINED IN THE 1975
DRAFT URGING GOVERNMENTS TO ESTABLISH ADEQUATE BORDER
CONTROLS AGAINST ILLEGAL MIGRANTS. A COMMISSION
MEMORANDUM EXPLAINS THAT "EFFECTIVE CONTROL AT THE
INTERNAL FRONTIERS OF THE COMMUNITY IS BECOMING MORE
AND MORE IMPRACTICABLE"; HENCE THE NEED TO PROVIDE BETTER

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"CHECKS ON NON-COMMUNITY LABOR AT THE PLACE OF
EMPLOYMENT."

8. WITH THE SUPPORT OF THE ESC AND PARLIAMENT, THE
COMMISSION IN ITS REVISED DRAFT RETAINED WHAT THE
COMMISSION CALLS "SEVERE PENALTIES WITH DETERRENT EFFECT"
--SANCTIONS THAT WOULD INCLUDE JAIL SENTENCES FOR
SERIOUS VIOLATIONS AMONG EMPLOYERS, WORKERS, AND OTHERS
INVOLVED IN ILLEGAL EMPLOYMENT OR ILLEGAL MIGRATION.
HOWEVER, THE COMMISSION DID NOT ACCEPT ESC'S AND
PARLIAMENT'S RECOMMENDATION THAT THE COMMISSION PROPOSE
A SIMILAR SET OF PENALTIES FOR ALL MEMBER STATES. "THE
PENAL SYSTEMS OF THE MEMBER STATES," THE COMMISSION
EXPLAINED, "...ARE SO DIFFERENT THAT SUCH HARMONIZATION
WOULD BE DIFFICULT."

9. A COMMISSION OFFICIAL RESPONSIBLE FOR FOREIGN WORKER
ISSUES TOLD THE MISSION LABATT APRIL 3 THAT THE
REVISIONS "GREATLY STRENGTHEN" THE PROPOSED DIRECTIVE.
HOWEVER, THE EARLY DRAFT WAS TOO STRONG FOR SOME MEMBERS

OF THE SOCIAL AFFAIRS WORKING GROUP OF THE COUNCIL'S
COMMITTEE OF PERMANENT REPRESENTATIVES (REFAIR), AND SO
THE NEW COMMISSION PROPOSAL ALSO FACES AN UNCERTAIN
FUTURE. MORRIS
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